

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CONNIE WILSON)	
Claimant)	
VS.)	
)	Docket Nos. 222,345 & 222,514
W. H. BRAUM, INC., and)	
SHALIMAR PLAZA NURSING HOME)	
Respondents)	
AND)	
)	
SELF-INSURED, and)	
BUSINESS INSURANCE COMPANY, a.k.a. BICO)	
Insurance Carriers)	

ORDER

Respondent, W. H. Braum, Inc., appeals from the June 11, 1997, preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore.

ISSUES

The Administrative Law Judge ordered respondent, W. H. Braum, Inc. (Braum's), to furnish claimant with preliminary benefits including medical treatment and temporary total disability compensation. Braum's argues that claimant's need for those benefits does not result from her work-related injury with Braum's, but instead are the result of a subsequent, intervening accident or accidents. Respondent, Shalimar Plaza Nursing Home (Shalimar), and its insurance carrier, Business Insurance Company, a.k.a. BICO, raise an issue concerning the Appeals Board's jurisdiction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record and considered the briefs of the parties, the Appeals Board finds for purposes of preliminary hearing as follows:

The Appeals Board has jurisdiction over the parties and the issue raised by Braum's. The Administrative Law Judge consolidated two docketed claims for purposes of preliminary hearing. This was done at the request of claimant and without objection by either respondent. The Order from which this appeal was taken addresses both docketed claims although only one respondent was ordered to provide benefits to claimant. Where multiple accidents and/or docketed claims are consolidated for purposes of hearing and the order covers each of those claims, should any party appeal such order the Appeals Board has jurisdiction over all of the claims covered by that order.

Shalimar also argues that the issue raised by Braum's is not an issue which the Appeals Board has the jurisdiction to review on an appeal from a preliminary hearing order. Shalimar argues that Braum's' defense goes only to the nature and extent of claimant's disability as Braum's admitted claimant sustained injury by accident arising out of and in the course of claimant's employment with Braum's. The nature and extent of disability is not one of the issues listed in K.S.A. 1996 Supp. 44-534a and does not otherwise give rise to an allegation that the Administrative Law Judge exceeded his jurisdiction in making his Order.

The question of whether claimant's temporary total disability and current need for medical treatment are the result of the admitted November 1996 accident at Braum's as opposed to some subsequent accident or accidents does, in part, give rise to the issue of the nature and extent of claimant's disability. However, it also gives rise to the question of whether the injury for which claimant is seeking benefits resulted from the accident which arose out of and in the course of her employment with Braum's. In this respect Braum's has alleged an issue which is listed in K.S.A. 44-534a as a jurisdictional issue.

Turning now to the issue raised by Braum's, the Appeals Board will review the finding by the Administrative Law Judge that Braum's should be responsible for the preliminary benefits ordered. In Docket No. 222,345 claimant alleges injury by accident at Braum's on November 21, 1996. As noted above, this accident is admitted by Braum's. Claimant was furnished medical treatment by Braum's and was taken off work for approximately six days. Following her release claimant did not return to work for Braum's but instead obtained part-time employment with another employer. She eventually went to work for Shalimar. In Docket No. 222,514 claimant alleged injury by a series of accidents ending January 20, 1997. Shalimar denies claimant suffered injury while in its employment and also denies notice. At the preliminary hearing, claimant recanted her allegation that she was injured working for Shalimar and testified that the claim against Shalimar was made upon advice of counsel. Claimant attributed all of her problems to the November 1996 accident at Braum's.

The conclusion by the Administrative Law Judge that claimant's present condition is the result of her accident at Braum's and not the result of any subsequent, intervening injury rests largely upon the Administrative Law Judge's determination that claimant's version of events was believable. In assessing claimant's credibility, the Administrative Law Judge had

the opportunity to personally observe claimant testify. For this reason, the Appeals Board gives some deference to the conclusion reached by the Administrative Law Judge concerning claimant's credibility. Furthermore, there was no testimony from any witness which contradicted claimant's testimony and to the extent the medical records and reports introduced into evidence at the preliminary hearing would support a different conclusion they were not persuasive. The report by Terrance C. Tisdale, M.D., supported claimant's position on causation. The record also contains records and reports from two treating doctors, Michael D. Grant, M.D., and Dennis C. Woodall, M.D. Counsel for Braum's is correct that neither Dr. Grant nor Dr. Woodall attribute claimant's injury solely to the accident at Braum's; however, neither do they give a specific opinion to the contrary. The fact that Dr. Woodall's notes reflect that when he initially saw her on January 27, 1997, claimant only mentioned the recent increase in her symptoms while working for Shalimar does not overcome the evidence to the contrary. Claimant testified that she did mention the accident at Braum's to Dr. Woodall and cannot explain its absence from his records. Claimant explained that her symptoms had worsened, which prompted her to seek additional medical treatment, but they were the same unresolved symptoms she had experienced following her injury at Braum's. Similarly, claimant explained the reason for not returning to Dr. Grant for follow-up treatment after she was released to return to work. Initially, she was feeling better after having been off work. Thereafter, when her symptoms did worsen, she contacted Braum's and was told her case had been closed. She subsequently went to her personal physician, Dr. Woodall, on her own.

The Appeals Board finds from the record as it currently exists that the greater weight of the credible evidence establishes that claimant's injury at Braum's was the cause of the injury for which she now seeks benefits.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore dated June 11, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1997.

BOARD MEMBER

c: Jan L. Fisher, Topeka, KS
Jeffrey D. Wicks, Great Bend, KS
Ronald J. Laskowski, Topeka, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director